

(d) When determining whether to accept a voluntary conveyance of a Native American borrower-owner's real property, the county official must consider:

(1) The cost of cleaning or mitigating the effects if a hazardous substance is found on the property. A deduction equal to the amount of the cost of a hazardous waste clean-up will be made to the fair market value of the property to determine if it is in the best interest of the Government to accept title to the property. FSA will accept the property if clear title can be obtained and if the value of the property after removal of hazardous substances exceeds the cost of hazardous waste clean-up.

(2) If the property is located within the boundaries of a federally recognized Indian reservation, and is owned by a member of the tribe with jurisdiction over the reservation, FSA will credit the Native American borrower-owner's account based on the fair market value of the property or the FSA debt against the property, whichever is greater.

[62 FR 44395, Aug. 21, 1997]

§ 1955.10 Voluntary conveyance of real property by the borrower to the Government.

Voluntary conveyance is a method of liquidation by which title to security is transferred to the Government. FmHA or its successor agency under Public Law 103-354 will not make a demand on a borrower to voluntarily convey. If there is equity in the property, FmHA or its successor agency under Public Law 103-354 should advise the borrower, in writing, that there is equity in the property before accepting an offer to voluntarily convey. If FmHA or its successor agency under Public Law 103-354 receives an offer of voluntary conveyance, acceptance should only be considered when the Government will likely receive a recovery on its investment. In cases where there are outstanding liens, a full assessment should be made of the debts against the property compared to the current market value. FmHA or its successor agency under Public Law 103-354 should refuse the voluntary conveyance, if the FmHA or its successor agency under Public Law

103-354 lien has neither present nor prospective value or recovery of the value would be unlikely or uneconomical. Instead, for loans to individuals, FmHA or its successor agency under Public Law 103-354 should release its lien as valueless in accordance with § 1965.25(d) of subpart A of part 1965 of this chapter or § 1965.118(c) of subpart C of this chapter, as appropriate. For non-FP borrowers, a voluntary conveyance should only be considered after all available servicing actions outlined in the respective servicing regulations have been used or considered and it is determined that the borrower will not be successful. For FP borrowers, if the borrower has not received exhibit A with attachments 1 and 2 of subpart S of part 1951 of this chapter, a voluntary conveyance should be accepted only after the borrower has been sent exhibit A with attachments 1 and 2 of subpart S of 1951 of this chapter; all available servicing actions outlined in the respective program servicing regulations have been used or considered; and it will be in the Government's best financial interest to accept the FP voluntary conveyance. Exhibit G of this subpart will be used to determine whether or not to accept an FP voluntary conveyance. In determining if the acceptance of the FP voluntary conveyance is in the best financial interest of the Government, the County Supervisor will determine if the borrower has exhausted all possibilities of restructuring the loan to where a feasible plan of operation may be developed, the borrower has acted in good faith in trying to service the debt and FmHA or its successor agency under Public Law 103-354 may recover its investment in return for the acceptance of the voluntary conveyance. In addition, prior to acceptance of a voluntary conveyance of farm real property that collateralizes an FP loan, the County Supervisor will remind the borrower-owner of possible deed restrictions and easement that may be placed on the property in the event the property contains wetlands, floodplains, historical sites and/or other federally protected environmental resources as set forth in exhibit M of subpart G of part 1940 of this chapter and § 1955.137 of subpart C of part 1955 of this chapter. When it is

determined that all conditions of § 1951.558(b) of subpart L of part 1951 of this chapter have been met, loans for unauthorized assistance will be treated as authorized loans and exhibit A with attachments 1 and 2 of subpart S of part 1951 of this chapter will be sent prior to accepting a voluntary conveyance. Those borrowers who are indebted for nonprogram (NP) loans who wish to voluntarily convey property will not be sent exhibit A with attachments 1 and 2 of subpart S of part 1951 of this chapter. For Farmer Program borrowers who have received exhibit A with attachments 1 and 2 of subpart S of part 1951 of this chapter, a voluntary conveyance should only be accepted when it is determined to be in the Government's best financial interest. Rejection of an offer of voluntary conveyance made before or after acceleration from an FP borrower is appealable. For borrowers having both FP and non-FP loans secured by a farm tract, a voluntary conveyance should be handled as outlined above for non-FP loans secured by farm tracts, except that the applicable servicing option for the FP and non-FP loans should be considered separately. This separation of servicing options may permit a borrower to retain the nonfarm tract. For newly constructed SFH properties with major construction defects, see subpart F of part 1924 of this chapter.

(a) *Authority*—(1) *Loans to individuals*—(i) *SFH loans*. The County Supervisor is authorized to accept voluntary conveyances regardless of amount of indebtedness.

(ii) [Reserved]

(2) *Loans to organizations*. (i) The State Director is authorized to approve voluntary conveyance of property securing Farmer Programs and EOC loans regardless of amount of indebtedness.

(ii) The State Director is authorized to approve voluntary conveyance of property securing MFH loans if the total indebtedness against the property, including prior and junior liens, does not exceed his/her approval authority for the type loan involved. Loan approval authorities are outlined in exhibits A through E of FmHA or its successor agency under Public Law 103-354 Instruction 1901-A (available in any

FmHA or its successor agency under Public Law 103-354 office).

(iii) Offers to convey property securing loans other than those outlined in paragraphs (a)(2)(i) and (ii) of this section will be submitted to the Administrator for approval prior to acceptance of the conveyance offer. Submissions will include the case file; OGC's opinion on settling any other liens involved; a statement of essential facts; and recommendations of the State Director and Program Chief. Submissions are to be addressed to the Administrator, ATTN: (appropriate program division.)

(b) *Forms and documents*. All forms and documents in connection with voluntary conveyance will be prepared and distributed in accordance with the respective FMI or applicable OGC instructions. For loans to individuals when the County Supervisor has approval authority, the facts will be documented in the running record of the borrower's case file. For all other loans, the servicing official will submit the voluntary conveyance offer, the case file and a narrative report to the appropriate approval official.

(c) *Liens against the property other than FmHA or its successor agency under Public Law 103-354 liens*—(1) *Prior liens*.

(i) The approval official will determine whether or not prior liens will be paid. Normally, the Government will pay prior liens in full prior to acquisition if:

(A) A substantial recovery on the Government's investment plus the amount of the prior lien(s) can be obtained; and

(B) The holder of the prior lien(s) objects to the Government accepting voluntary conveyance subject to the prior lien(s), if consent of the prior lienholder(s) is required.

(ii) If property is acquired subject to prior lien(s), payment of installments on the lien(s) may be made while title to the property is held by the Government in accordance with § 1955.67 of subpart B of part 1955 of this chapter.

(2) *Junior liens*. The borrower must satisfy junior liens on the property (except FmHA or its successor agency under Public Law 103-354 liens) and pay real estate taxes or assessments which

are or will become a lien on the property. However, if the borrower is unable or unwilling to do so, settlement of the liens may be made by FmHA or its successor agency under Public Law 103-354 if settlement would be in the best interest of the Government, considering all factors such as length of time required to foreclose, vandalism or other deterioration of the property which might occur, and effect on management of a MFH project and its tenants. An FmHA or its successor agency under Public Law 103-354 official will contact junior lienholders, negotiate the most favorable settlement possible, and determine whether it is in the Government's best interest to settle the junior liens and accept the voluntary conveyance.

(i) For loans to individuals, the approval official is authorized to settle junior liens in the smallest amount possible, but not to exceed an aggregate amount of \$1,000 in each SFH case or \$5,000 for other type loans. For junior liens in greater amounts when the approval official is the County Supervisor or District Director, prior authorization must be obtained from the State Director.

(ii) For loans to organizations, the State Director will determine whether or not junior liens will be settled and voluntary conveyance accepted.

(3) *Payment of liens.* A lien to be settled in accordance with paragraph (c)(1)(i) or (c)(2) of this section will be paid as outlined in §1955.5(d) of this subpart and charged to the borrower's account as a recoverable cost.

(d) *Offer of voluntary conveyance.* An offer of voluntary conveyance will consist of the following:

(1) Form FmHA or its successor agency under Public Law 103-354 1955-1, "Offer to Convey Security."

(2) Warranty deed, or other deed approved by OGC to comply with State Laws. The deed will not be recorded until it is determined the voluntary conveyance will be accepted. At the time of the offer, the borrowers will be informed that the conveyance will not be accepted until the property has been appraised and a lien search has been obtained. If the voluntary conveyance is not accepted, the deed and Form FmHA or its successor agency under

Public Law 103-354 1955-1, properly executed, will be returned to the borrower along with a memorandum stating the reason(s) for nonacceptance.

(3) A current financial statement containing information similar to that required to complete Forms FmHA or its successor agency under Public Law 103-354 410-1, "Application for FmHA or its successor agency under Public Law 103-354 Services" or FmHA or its successor agency under Public Law 103-354 442-3, "Balance Sheet," and information on present income and potential earning ability. Exception for SFH loans: FmHA or its successor agency under Public Law 103-354 requires a budget and/or financial statement and, if necessary to discover suspected undisclosed assets, a search of public records, only when the value of the security property may be less than the debt.

(4) For organization borrowers, a duly-adopted Resolution by the governing body authorizing the conveyance and certified by the attesting official with the corporate seal affixed. The Resolution will indicate which officials are authorized to execute the offer to convey and the deed on behalf of the borrower. If shareholder approval is necessary, the Resolution will specifically recite that shareholder approval has been obtained.

(5) If water rights, mineral rights, development rights, or other use rights are not fully covered in the deed, the advice of OGC will be obtained and appropriate documents to transfer rights to the Government will be obtained before the voluntary conveyance is accepted. The documents will be recorded, if necessary, in connection with closing the conveyance.

(6) If property is under lease, an assignment of the lease to the Government will be obtained with the effective date being the date the voluntary conveyance is closed. If an oral lease is in force, it will be reduced to writing and assigned to the Government.

(7) The borrower may be required to provide a title insurance policy or a final title opinion from a designated attorney when the State Director determines it is necessary to protect the Government's interest. Such title insurance policy or final title opinion

will show title vested to the Government subject only to exceptions and liens approved by the County Supervisor.

(8) Farmer program loan borrowers who voluntarily convey after receiving the appropriate loan servicing notice(s) contained in the attachments of exhibit A of subpart S of part 1951 of this chapter, must properly complete and return the acknowledgement form sent with the notice.

(9) For MFH loans, assignment of Housing Assistance Payment (HAP) Contracts will be obtained. Rental Assistance will be retained until the State Director is advised by OGC that FmHA or its successor agency under Public Law 103-354 has title to the property, but may be suspended while the conveyance is pending according to exhibit E of subpart C of part 1930 of this chapter.

(e) *Appraisal of property.* After an offer of voluntary conveyance, but before acceptance by FmHA or its successor agency under Public Law 103-354, an appraisal of the property will be made to establish the current market value of the property. If a qualified FmHA or its successor agency under Public Law 103-354 appraiser is not available to appraise property securing a loan other than MFH, the State Director may obtain an appraisal from a qualified appraiser outside FmHA or its successor agency under Public Law 103-354 in accordance with FmHA or its successor agency under Public Law 103-354 Instruction 2024-A (available in any FmHA or its successor agency under Public Law 103-354 office). For property securing MFH, prior authorization must be obtained by the Assistant Administrator, Housing, to secure an appraisal from a source outside FmHA or its successor agency under Public Law 103-354. For property securing FP loan(s), the contract appraiser must complete the appraisal in accordance with § 761.7 of this title for FP property, or subpart C of part 1922 for Single Family Housing property. Also, the appraiser must meet at least one of the following qualifications:

(1) Certification by a National or State Appraisal Society.

(2) If a certified appraiser is not available, the appraiser may be one

who meets the criteria for certification in a National or State Appraisal Society.

(3) The appraiser has recent, relevant documented appraisal experience or training, or other factors clearly establishing the appraiser's qualifications.

(f) *Processing offer to convey security and acceptance by FmHA or its successor agency under Public Law 103-354.* If a borrower has both SFH and other type loans, the portion of this paragraph dealing with the loan(s) other than SFH will be followed.

(1) *SFH loans.* FmHA or its successor agency under Public Law 103-354 does not solicit or encourage conveyance of SFH security property to the Government and will consider a borrower's offer to convey by deed in lieu of foreclosure only after the debt is accelerated and when it is in the Government's interest. Upon receipt of an offer to convey, the servicing official will remind the borrower of provisions for voluntary liquidation under 7 CFR part 3550, and the consequences of a conveyance by deed in lieu of foreclosure as follows: All costs related to the conveyance which FmHA or its successor agency under Public Law 103-354 pays will be added to the debt; a credit equal to the market value of the property, as determined by FmHA or its successor agency under Public Law 103-354, less prior liens, will be applied to the debt; and if the credit does not satisfy the debt, the borrower will not automatically be released of liability. The unsatisfied debt, after acceleration under § 1955.10(h)(5) of this subpart, may be settled according to subpart B of part 1956 of this chapter; however, a deficiency judgment will not be pursued when the borrower was granted a moratorium if the borrower faithfully tried to meet loan obligations. The conveyance is processed as follows:

(i) Before accepting the offer, the County Supervisor will transmit the deed to a closing agent requesting a title search covering the period of time since the latest title opinion in the case file. The same agent who closed the loan should be used, if possible; otherwise one will be selected from the approved list of closing agents, taking care that cases are distributed fairly among approved agents. The closing

agent may be instructed that the County Supervisor considers the voluntary conveyance offer conditionally approved, and the closing agent may record the deed after the title search if there are no liens against the property other than:

(A) The FmHA or its successor agency under Public Law 103-354 lien(s);

(B) Prior liens when FmHA or its successor agency under Public Law 103-354 has advised the closing agent that title will be taken subject to the prior lien(s) or has told the closing agent that the prior lien(s) will be handled in accordance with §1955.10(c)(1) of this subpart; and/or

(C) Real estate taxes and/or assessments which must be paid when title to the property is transferred.

(ii) If junior liens are discovered, the closing agent will be requested to provide FmHA or its successor agency under Public Law 103-354 with the lienholder's name, amount of lien, date recorded, and the recording information (recording office, book and page), return the unrecorded deed to FmHA or its successor agency under Public Law 103-354, and await further instructions from FmHA or its successor agency under Public Law 103-354. In such cases, the County Supervisor will proceed in accordance with §1955.10(c)(2) of this subpart. If agreement has been reached with the lienholder(s) for settling the junior lien(s) in order to accept the conveyance, the deed will be returned to the closing agent for a title update and recording.

(iii) The closing agent will be requested to provide a certification of title to FmHA or its successor agency under Public Law 103-354 after recordation of the deed. A certification of title in a statement that fee title is vested in the Government subject only to the FmHA or its successor agency under Public Law 103-354 lien(s) and prior liens previously approved by FmHA or its successor agency under Public Law 103-354. After receipt of the certification of title, the County Supervisor will notify the borrower that the conveyance has been accepted in accordance with §1955.10(g) of this subpart.

(2) *Consolidated Farm and Rural Development Act (CONACT) loans to individuals.* If the Agency indebtedness plus

any prior liens exceeds the market value of the property, the indebtedness cannot be satisfied but a credit can be given equal to the market value less prior liens. Debt settlement will be considered in accordance with subpart B of part 1956 of this chapter.

(i) *Crediting accounts.* The Agency will credit an account by an amount equal to the market value less prior liens, unless the borrower is Native American. Native American borrower-owners will be credited with the fair market value or the Agency debt against the property, whichever is greater, provided:

(A) The borrower-owner is a member of a tribe or the tribe, and

(B) The property is located within the confines of a federally recognized Indian reservation.

(ii) *Agency approval.* The same procedure outlined in paragraphs (f)(1)(i) through (f)(1)(iii) of this section will be followed for approving the voluntary conveyance. The conveyance will be accepted in full satisfaction of the indebtedness unless the market value of the property to be conveyed is less than the total of Government indebtedness and prior liens, and the borrower has agreed to accept a credit in the amount of the market value of the security property less prior liens, if any.

(3) *Loans to organizations.* When an offer of voluntary conveyance is received from an organization borrower, and the market value of the property being conveyed (less prior liens, if any) is less than the Government debt, full consideration must be given to the borrower's present situation and future prospects for paying all or a part of the debt.

(g) *Closing of conveyance.* (1) The conveyance to the Government will be considered closed when the recorded deed has been returned to FmHA or its successor agency under Public Law 103-354, a certification of title is received from the closing agent that title is vested in the Government with no outstanding encumbrances other than the FmHA or its successor agency under Public Law 103-354 lien(s) or previously approved prior liens, and the borrower is notified of the acceptance of the conveyance. For loans to organizations, OGC will be requested to review the

case to verify that it was closed properly. The property will be assigned an ID number and entered into the Acquired Property Tracking System through the Automated Discrepancy Processing System (ADPS) terminal in the County Office.

(2) When costs incident to the completion of the transaction are to be paid by the Government, the servicing official will prepare and process the necessary documents as outlined in §1955.5(d) of this subpart and the costs will be charged to the borrower's account as recoverable costs. This includes taxes and assessments, water charges which protect the right to receive water, other liens, closing agent's fee, and any other costs related to the conveyance.

(h) *Actions to be taken after closing conveyance.* (1) When the FmHA or its successor agency under Public Law 103-354 account is satisfied, the note(s) will be stamped "Satisfied by Surrender of Security and Borrower Released from Liability," and the statement must be signed by the servicing official.

(2) When the FmHA or its successor agency under Public Law 103-354 account is not satisfied and the borrower is not released from liability, the note(s) will be retained by FmHA or its successor agency under Public Law 103-354.

(3) The servicing official will release the lien(s) of record, indicating that the debt was satisfied by surrender of security or that the lien is released but the debt not satisfied, whichever is applicable. If the lien is to be released but the debt not satisfied, OGC will provide the type of instrument required to comply with applicable State laws.

(4) After release of the lien(s), the servicing official will return the following to the borrower:

(i) If borrower is released from liability, the satisfied note(s) and a copy of Form FmHA or its successor agency under Public Law 103-354 1955-1 showing acceptance by the Government; or

(ii) If borrower is not released from liability, a copy of Form FmHA or its successor agency under Public Law 103-354 1955-1 showing acceptance by the Government.

(5) When the FmHA or its successor agency under Public Law 103-354 account is not satisfied and the borrower not released from liability, the account balance, after deducting the "as is" market value and prior liens, if any, will be accelerated utilizing exhibit F of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office).

(6) For MFH loans, the State Director will cancel any interest credit and suspend any rental assistance. These actions will be accomplished by notifying the Finance Office unit which handles MFH accounts. In the interim the tenants will continue rental payments in accordance with their lease. Tenants will be informed of the pending liquidation action and the possible consequences of the action. FmHA or its successor agency under Public Law 103-354 Guide Letters 1965-E-2, 1965-E-3, and 1965-E-5 (available in any FmHA or its successor agency under Public Law 103-354 office) may be used to inform tenants, but should be modified to reflect the specific action and circumstances. If the project is to be removed from the FmHA or its successor agency under Public Law 103-354 program, a minimum of 180 days' notice to the tenants is required. Letters of Priority Entitlement must be made available to any tenants that will be displaced as required by §1965.215(e)(4) of subpart E of part 1965 of this chapter.

(7) Actions outlined in §1955.18 of this subpart will be taken, as applicable.

[50 FR 23904, June 7, 1985, as amended at 50 FR 45782, Nov. 1, 1985]

EFFECTIVE DATE NOTE: At 69 FR 69105, Nov. 26, 2004, §1955.10 was amended by revising paragraph (d)(9) and in paragraph (h)(6) by removing the fifth sentence and by revising the last two sentences, effective Feb. 24, 2005. For the convenience of the user, the revised text is set forth as follows:

§ 1955.10 Voluntary conveyance of real property by the borrower to the Government.

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(d) * * *

(9) For MFH loans, assignment of Housing Assistance Payments (HAP) Contracts will be obtained. Rental Assistance will be retained until the State Director is advised by

RHS, RBS, RUS, FSA, USDA

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OGC that the Agency has title to the property. After a voluntary conveyance, the Agency may transfer Rental Assistance in accordance with 7 CFR part 3560, subpart F.

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(h) * * *

(6) * * * If the project is to be removed from the Rural Development program, a minimum of 180 days' notice to the tenants is required. Letters of Priority Entitlement must be made available to any tenants that will be displaced.

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§ 1955.11 Conveyance of property to FmHA or its successor agency under Public Law 103-354 by trustee in bankruptcy.

(a) *Authority.* With the advice of OGC (and prior approval of the National Office for MFH, Community Programs, and insured B&I loans), the State Director within his/her authority is authorized to accept a conveyance of property to the Government by the Trustee in Bankruptcy, provided:

(1) The Bankruptcy Court has approved the conveyance;

(2) The conveyance will permit a substantial recovery on the FmHA or its successor agency under Public Law 103-354 debt; and

(3) FmHA or its successor agency under Public Law 103-354 will acquire title free of all liens and encumbrances except FmHA or its successor agency under Public Law 103-354 liens.

(b) *Fees and deed.* (1) FmHA or its successor agency under Public Law 103-354 may pay any necessary and proper fees approved by the bankruptcy court in connection with the conveyance. Before paying a fee to a trustee for a Trustee's Deed in excess of \$300 for any loan type(s) other than Farmer Programs or \$1,000 for Farmer Program loans, prior approval of the Administrator must be obtained. The State Director will process the necessary documents as outlined in § 1955.5(d) of this subpart for payment of fees as recoverable costs.

(2) Conveyance may be by Trustee's Deed instead of a warranty deed. If upon advice of OGC it is determined a deed from any other person or entity (including the borrower) is necessary

to obtain clear title, a deed from such person or entity will be obtained.

(c) *Acceptance.* The conveyance will be accepted for an amount of credit to the borrower's FmHA or its successor agency under Public Law 103-354 account(s) as set forth in § 1955.18(e)(4) of this subpart.

(d) *Reporting.* Acquisition of property under this section will be reported in accordance with § 1955.18(a) of this subpart.

[50 FR 23904, June 7, 1985, as amended at 53 FR 27827, July 25, 1988]

§ 1955.12 Acquisition of property which served as security for a loan guarantee by FmHA or its successor agency under Public Law 103-354 or at sale by another lienholder, bankruptcy trustee, or taxing authority.

When the servicing regulations for the type of loan(s) involved permit FmHA or its successor agency under Public Law 103-354 to acquire property by one of these methods, the acquisition will be reported in accordance with § 1955.18(a) of this subpart.

§ 1955.13 Acquisition of property by exercise of Government redemption rights.

When the Government did not protect its interest in security property in a foreclosure by another lienholder, and if the Government has redemption rights, the State Director will determine whether to redeem the property. This determination will be based on all pertinent factors including the value of the property after the sale, and costs which may be incurred in acquiring and reselling the property. For Farmer Program loans, the County Supervisor will document the determination on exhibit G of this subpart. The decision must be made far enough in advance of expiration of the redemption period to permit exercise of the Government's rights. If the property is to be redeemed, complete information documenting the basis for not acquiring the property at the sale and factors which justify redemption of the property will be included in the case file. The assistance of OGC will be obtained in effecting the redemption. If the State Director decides not to redeem the property, the Government's right of redemption